

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LEADAWN FERGUSON,

Plaintiff,

v.

UNITED STATES OF AMERICA; CBP
OFFICER STEPHEN LEMANSKI; CBP
OFFICER THERESA TANDARIC; CBP
OFFICER RIK REYNOLDS; PORT
DIRECTOR ALLEN MARTOCCI; AREA
ASSISTANT PORT DIRECTOR PAUL
NARDELLA; SUPERVISORY CBP OFFICER
JEFFREY ADAMS; SUPERVISORY CBP
OFFICER MICHAEL GULKIS; CBP DUTY
CHIEF ROBERT HEISS; CBP OFFICER
NURIAN BADILLO-VARGAS; CBP
OFFICER KATHLEEN BROWN; CBP
OFFICER STEPHEN CHOROMANSKI; CBP
OFFICER JOSE COLON; CBP OFFICER
AKIO WISE; RAJ K. GHIMIRE, MD; DEREK
L. ISENBERG, MD; MAURA E. SAMMON,
MD; NURSE TARA; CHOWDHURY; NURSE
STACEY RUTLAND; NURSE NATALIE
TRABOSCIA; MEDICAL PROVIDER AND
HOSPITALSTAFF DOES 1-5; MERCY
FITZGERALD HOSPITAL; MERCY
HEALTH SYSTEM,

Defendants.

CIVIL ACTION NO. 14-cv-6807

JURY TRIAL DEMANDED

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS,
DEREK L. ISENBERG, M.D., MAURA E. SAMMON, M.D., NURSE TARA
CHOWDHURY, NURSE STACEY RUTLAND, AND NURSE NATALIE TRABOSCIA,
TO PLAINTIFF'S AMENDED COMPLAINT**

Answering Defendants, Derek L. Isenberg, M.D., Maura E. Sammon, M.D., Nurse Tara Chowdhury, Nurse Stacey Rutland, and Nurse Natalie Traboscia, by and through counsel, O'Brien & Ryan, LLP, hereby respond to Plaintiff's Amended Complaint and aver as follows:

I. PRELIMINARY STATEMENT

1. – 3. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

4. Denied.

5. Denied as stated. By way of further response, Plaintiff consented to the monitoring of her vital signs.

6. Admitted in part, denied in part. It is admitted that testing was negative for contraband. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations set forth in this paragraph of Plaintiff's Amended Complaint.

7. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

8. Denied as a conclusion of law.

9. Admitted in part, denied in part. It is admitted that Plaintiff's Amended Complaint asserts the claims referenced in this paragraph. It is denied that Plaintiff is entitled to the relief sought.

II. JURISDICTION AND VENUE

10. – 12. Denied as a conclusion of law.

III. PARTIES

13. – 28. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

29. Denied as a conclusion of law.

30. Admitted in part, denied in part. It is admitted that, at all times relevant, Raj K. Ghimire, M.D. was an employee of Mercy Fitzgerald Hospital. It is denied that he was an employee of Mercy Health System.

31. Admitted in part, denied in part. It is admitted that, at all times relevant, Derek L. Isenberg, M.D. was an employee of Mercy Fitzgerald Hospital. It is denied that he was an employee of Mercy Health System.

32. Admitted in part, denied in part. It is admitted that, at all times relevant, Maura E. Sammon, M.D. was an employee of Mercy Fitzgerald Hospital. It is denied that she was an employee of Mercy Health System.

33. Admitted in part, denied in part. It is admitted that, at all times relevant, Tara Chowdhury was an employee of Mercy Fitzgerald Hospital. It is denied that she was an employee of Mercy Health System.

34. Admitted in part, denied in part. It is admitted that, at all times relevant, Stacey Rutland was an employee of Mercy Fitzgerald Hospital. It is denied that she was an employee of Mercy Health System.

35. Admitted in part, denied in part. It is admitted that, at all times relevant, Natalie Traboscia was an employee of Mercy Fitzgerald Hospital. It is denied that she was an employee of Mercy Health System.

36. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

37. Denied as a conclusion of law.

38. Denied as a conclusion of law.

IV. FACTUAL ALLEGATIONS

39. – 72. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

73. Admitted.

74. Admitted.

75. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

76. Admitted.

77. Admitted.

78. Admitted in part, denied in part. It is admitted that Natalie Traboscia, RN noted that Plaintiff's respirations were unlabored, her speech was coherent, and that she was alert and oriented times three. The remaining allegations set forth in this paragraph of Plaintiff's Amended Complaint are denied.

79. Denied.

80. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

81. Denied.

82. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

83. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

84. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

85. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

86. Denied as stated. By was of further response, Plaintiff was not placed in an inpatient room.

87. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

88. Denied as stated.

89. Denied.

90. Denied.

91. Denied.

92. Admitted.

93. Denied as stated.

94. Denied as stated.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied as stated.

101. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

102. Denied as stated.

103. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

104. Denied.

105. Denied as stated.

106. Denied as stated.

107. Denied as stated.

108. Denied.

109. Denied.

110. Admitted.

111. Admitted.

112. Admitted.

113. Denied as stated.

114. Denied as stated.

115. Upon information and belief, admitted.

116. Denied.

117. Denied.

118. Denied.

119. Denied as stated.

120. Denied as stated.

121. Admitted.

122. Denied as stated.

123. Denied.

124. Admitted.

125. Admitted.

126. Denied.

127. Admitted.

128. Admitted.

129. Admitted.

130. Admitted.

131. Denied as stated.

132. Denied.

133. Denied.

134. Denied as stated.

135. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

136. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

137. Denied as stated.

138. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

139. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

140. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

141. Denied.

142. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

143. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

144. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

145. Denied. By way of further response, Plaintiff consented to the monitoring of her vital signs. Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations set forth in this paragraph of Plaintiff's Amended Complaint.

146. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

147. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

148. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

149. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

V. CAUSES OF ACTION

Count I

Plaintiff LeaDawn Ferguson v. Defendant United States of America Federal Tort Claims Act – False Arrest/False Imprisonment

150. – 152. This count of Plaintiff's Amended Complaint does not relate to Answering Defendants.

Count II

**Plaintiff LeaDawn Ferguson v. Defendant United States of America
Federal Tort Claims Act – Assault and Battery**

153. – 155. This count of Plaintiff's Amended Complaint does not relate to Answering Defendants.

Count III

**Plaintiff LeaDawn Ferguson v. Defendant United States of America
Federal Tort Claims Act – Intentional Infliction of Emotional Distress**

156. – 158. This count of Plaintiff's Amended Complaint does not relate to Answering Defendants.

Count IV

**Plaintiff LeaDawn Ferguson v. Defendant United States of America
Federal Tort Claims Act – Negligence**

159. – 162. This count of Plaintiff's Amended Complaint does not relate to Answering Defendants.

Count V

**Plaintiff LeaDawn Ferguson v. Defendant United States of America
Federal Tort Claims Act – Negligent Supervision, Hiring and Retention**

163. – 166. This count of Plaintiff's Amended Complaint does not relate to Answering Defendants.

Count VI

**Plaintiff LeaDawn Ferguson v. Defendants Lemanski, Tandaric, Reynolds, Martocci,
Nardella, Adams, Gulkis, Heiss, Badillo-Vargas, Brown, Choromanski, Colon, Wise,
Isenberg, Sammon, Chowdhury, Rutland, Traboscia and Does 1-5
Bivens Claim – Fourth Amendment – Unlawful Seizure**

167. – 168. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

Count VII

Plaintiff LeaDawn Ferguson v. Defendants Lemanski, Tandaric, Reynolds, Martocci, Nardella, Adams, Gulkis, Heiss, Badillo-Vargas, Brown, Choromanski, Colon, Wise, Isenberg, Sammon, Chowdhury, Rutland, Traboscia and Does 1-5
Bivens Claim – Fourth Amendment – Unlawful Search

169. – 170. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

Count VIII

Plaintiff LeaDawn Ferguson v. Defendants Lemanski, Tandaric, Reynolds, Martocci, Nardella, Adams, Gulkis, Heiss, Badillo-Vargas, Brown, Choromanski, Colon, Wise, Isenberg, Sammon, Chowdhury, Rutland, Traboscia and Does 1-5
Bivens Claim – Fifth Amendment – Due Process Violation

171. – 172. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

Count IX

Plaintiff LeaDawn Ferguson v. Defendants Isenberg, Sammon, Chowdhury, Rutland, Traboscia, Does 1-5, Mercy Fitzgerald Hospital and Mercy Health System
State Law Claim – False Arrest/False Imprisonment

173. – 175. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

Count X

Plaintiff LeaDawn Ferguson v. Defendants Isenberg, Sammon, Chowdhury, Rutland, Traboscia, Does 1-5, Mercy Fitzgerald Hospital and Mercy Health System
State Law Claim – Assault and Battery

176. – 178. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

Count XI

Plaintiff LeaDawn Ferguson v. Defendants Isenberg, Sammon, Chowdhury, Rutland, Traboscia, Does 1-5, Mercy Fitzgerald Hospital and Mercy Health System
State Law Claim – Intentional Infliction of Emotional Distress

179. – 181. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

Count XII

**Plaintiff LeaDawn Ferguson v. Defendants Isenberg, Sammon, Chowdhury, Rutland, Traboscia, Does 1-5, Mercy Fitzgerald Hospital and Mercy Health System
State Law Claim – Negligence**

182. – 185. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

Count XIII

**Plaintiff LeaDawn Ferguson v.
Defendants Mercy Fitzgerald Hospital and Mercy Health System
State Law Claim – Negligent Supervision, Hiring and Retention**

186. – 188. This count of Plaintiff's Amended Complaint does not relate to Answering Defendants.

Count XIV

**Plaintiff LeaDawn Ferguson v. Defendants Isenberg, Sammon, Chowdhury, Rutland, Traboscia and Does 1-5
State Law Claim – Civil Conspiracy**

189. – 190. Denied as a conclusion of law. To the extent this paragraph of Plaintiff's Amended Complaint contains factual allegations, those allegations are denied.

WHEREFORE, Answering Defendants, Derek L. Isenberg, M.D., Maura E. Sammon, M.D., Nurse Tara Chowdhury, Nurse Stacey Rutland, Nurse Natalie Traboscia, respectfully request that this Honorable Court enter judgment in their favor and against Plaintiff, together with reasonable costs, interest, and attorneys' fees, on Plaintiff's Amended Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff's alleged injuries, if any, were not caused by any action or inaction of Answering Defendants.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations and/or the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of estoppel and/or res judicata.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of release.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of assumption of the risk.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's contributory negligence.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate the alleged damages, if any.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Medical Care Availability and Reduction of Error (MCARE) Act, 40 P.S. § 1303.101, *et seq.*

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the Mental Health Procedures Act, 50 P.S. § 7101, *et seq.*

TWELFTH AFFIRMATIVE DEFENSE

Answering Defendants were not grossly negligent.

THIRTEENTH AFFIRMATIVE DEFENSE

Answering Defendants at all times in good faith.

FOURTEENTH AFFIRMATIVE DEFENSE

Answering Defendants are entitled to qualified immunity.

FIFTEENTH AFFIRMATIVE DEFENSE

Answering Defendants did not violate any clearly established constitutional rights.

WHEREFORE, Answering Defendants, Derek L. Isenberg, M.D., Maura E. Sammon, M.D., Nurse Tara Chowdhury, Nurse Stacey Rutland, and Nurse Natalie Traboscia, respectfully request that this Honorable Court enter judgment in their favor and against Plaintiff, together with reasonable costs, interest, and attorneys' fees, on Plaintiff's Amended Complaint.

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Dated: May 2, 2016

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Dated: May 2, 2016